



2024/842

12.3.2024

COMMISSION IMPLEMENTING REGULATION (EU) 2024/842

of 11 March 2024

re-imposing safeguard measures with regard to imports of Indica rice originating in Cambodia and Myanmar/Burma

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 ⁽¹⁾ (hereinafter 'the GSP-Regulation'), and in particular Article 26 thereof,

Whereas:

1. PROCEDURE

- (1) Following a safeguard investigation pursuant to Article 22 of the GSP-Regulation, on 17 January 2019 the European Commission ('the Commission') published Commission Implementing Regulation (EU) 2019/67 ⁽²⁾ imposing safeguard measures with regard to imports of Indica rice originating in Cambodia and Myanmar/Burma falling under CN codes 1006 30 27, 1006 30 48, 1006 30 67 and 1006 30 98, by which the Commission reintroduced the Common Customs Tariff duties on imports of Indica rice for a period of one year followed by a progressive reduction in the rate of duty applicable for a period of two years ('the Regulation at issue').

1.1. The judgment in Case T-246/19

- (2) The Kingdom of Cambodia and the Cambodia Rice Federation challenged the Regulation at issue in the General Court of the European Union ('the General Court').
- (3) By its judgment of 9 November 2022 in Case T-246/19 *Kingdom of Cambodia and Cambodia Rice Federation v Commission* ('the Judgment'), the General Court annulled Implementing Regulation (EU) 2019/67 imposing safeguard measures with regard to imports of Indica rice originating in Cambodia and Myanmar/Burma.
- (4) The General Court found that the Commission erred in law and made a manifest error of assessment by arbitrarily limiting the scope of its investigation concerning the injury caused to the Union industry solely to millers of milled or semi-milled Indica rice processed from paddy rice grown or harvested in the European Union. The incorrect definition of Union producers also vitiated the analysis of the existence of serious difficulties since the Commission excluded some of the Union producers from the injury assessment.
- (5) The General Court also found that the Commission failed to provide evidence to the requisite standard with respect to the adjustments made in the context of the price undercutting analysis.
- (6) Finally, the General Court found that the Commission infringed the applicants' rights of defence and the obligation to disclose the essential facts and considerations or the details underlying them. In particular, the Commission failed to disclose information of the data underlying the consumption and injury indicators and of the price undercutting analysis and the adjustments made following the comments of the interested parties on the general disclosure document.

⁽¹⁾ OJ L 303, 31.10.2012, p. 1.

⁽²⁾ Commission Implementing Regulation (EU) 2019/67 of 16 January 2019 imposing safeguard measures with regard to imports of Indica rice originating in Cambodia and Myanmar/Burma (OJ L 15, 17.1.2019, p. 5).

1.2. Implementation of the Judgment

- (7) Article 266 TFEU provides that the institutions must take the necessary measures to comply with the Union Courts' judgments. In case of annulment of an act adopted by the institutions in the context of an administrative procedure, such as general safeguard investigations under the GSP Regulation, compliance with the Union Court's judgment consists in the replacement of the annulled act by a new act, in which the illegality identified by the Court is eliminated ⁽³⁾.
- (8) According to the case-law, the procedure for replacing the annulled act may be resumed at the very point at which the illegality occurred ⁽⁴⁾. That implies in particular that in a situation where an act concluding an administrative procedure is annulled, that annulment does not necessarily affect the preparatory acts, such as in this case the initiation of the safeguard procedure. In a situation where, for instance, a Regulation imposing general safeguard measures under the GSP-Regulation by which the European Commission reintroduced the Common Customs Tariff duties on imports for a period of three years is annulled, that means that, following to the annulment, the safeguard proceeding is still open, because the act concluding the safeguard proceeding has disappeared from the Union legal order ⁽⁵⁾, except if the illegality occurred at the stage of initiation.
- (9) In the present case the General Court annulled the Regulation at issue on the grounds mentioned under recitals (4) to (6).
- (10) Following the Judgment, on 19 January 2023, by means of a Notice ('the reopening Notice') ⁽⁶⁾ the Commission decided to reopen the investigation and to resume it at the point at which the irregularity occurred.
- (11) As explained in the re-opening Notice, the purpose of reopening the original investigation was to fully address the errors identified by the General Court, and to assess whether the application of the rules as clarified by the General Court warrants the re-imposition of the measures, which would lead to the reintroduction of the Common Customs Tariff duties on imports of Indica rice originating in Cambodia falling under CN codes 1006 30 27, 1006 30 48, 1006 30 67 and 1006 30 98, followed by a progressive reduction in the rate of duty applicable, for the original period of 3 years, namely between 18 January 2019 and 18 January 2022.
- (12) At the same time as the publication of the re-opening Notice, pursuant to Commission Implementing Regulation (EU) 2023/132 ⁽⁷⁾, the Commission instructed the national customs authorities to await the outcome of the re-examination before deciding on any repayment claim concerning the duties annulled by the General Court and to put on hold any claims for reimbursements of the annulled duties until the outcome of the re-examination was published in the *Official Journal of the European Union*.
- (13) The Commission informed interested parties upon reopening.

1.3. Comments from interested parties upon reopening

- (14) The Commission received comments from one interested party ⁽⁸⁾.

⁽³⁾ Joined Cases 97, 193, 99 and 215/86 *Asteris v Commission* EU:C:1988:46, paragraphs 27 and 28; and Case T-440/20 *Jindal Saw v European Commission*, EU:T:2022:318, paragraph 115.

⁽⁴⁾ Case C-415/96 *Spain v Commission*, EU:C:1998:533, paragraph 31; Case C-458/98 *P Industrie des Poudres Sphériques v Council* EU:C:2000:531, paragraphs 80 to 85; Case T-301/01 *Alitalia v Commission* EU:T:2008:262, paragraphs 99 and 142; Joined Cases T-267/08 and T-279/08 *Région Nord-Pas de Calais v Commission* EU:T:2011:209, paragraph 83.

⁽⁵⁾ Case C-415/96 *Spain v Commission* EU:C:1998:533, paragraph 31; Case C-458/98 *P Industrie des Poudres Sphériques v Council* EU:C:2000:531, paragraphs 80 to 85.

⁽⁶⁾ Notice of re-opening of the safeguard investigation following the judgment of the General Court of 9 November 2022 in Case T-246/19 with regard to Commission Implementing Regulation (EU) 2019/67 imposing safeguard measures with regard to imports of Indica rice originating in Cambodia and Myanmar/Burma (OJ C 18, 19.1.2023, p. 8).

⁽⁷⁾ Commission Implementing Regulation (EU) 2023/132 of 18 January 2023 on safeguard measures with regards to imports of Indica rice originating in Cambodia following the re-opening of the investigation in order to implement the judgment of the General Court of 9 November 2022 in Case T-246/19, with regard to Implementing Regulation (EU) 2019/67 (OJ L 17, 19.1.2023, p. 88).

⁽⁸⁾ Cocal is the European association of trade in cereals, oilseeds, rice, pulses, olive oil, oils and fats, animal feed and agro-supply.

- (15) Coceral welcomed the re-opening of the investigation on imports of Indica rice originating in Cambodia. At the same time, it reiterated the arguments made in the context of the original investigation leading to the Regulation at issue, and further stated that the Regulation at issue did not provide a complete overview of the rice trade market.
- (16) The Commission noted that some of Coceral's claims referred to the out-of-date analysis made in the Regulation at issue and were no longer relevant or had already been addressed in the Regulation at issue by the Commission. Findings in the Regulation at issue, which were not contested, or which were contested but rejected by the General Court or not examined by the General Court and not tainted by the errors found in the Judgment, remain fully valid ⁽⁹⁾.

1.4. Disclosure

- (17) On 20 December 2023 the Commission informed all interested parties of the above essential facts and consideration on the basis of which it intended to propose to re-impose safeguard measures on Indica rice originating in Cambodia and Myanmar/Burma for the period 18 January 2019 to 18 January 2022.
- (18) All parties were granted a period within which they could make comments on the final disclosure. Comments to the final disclosure were received from the Cambodia Rice Federation ("CRF").
- (19) Subsequently, on 11 January 2024 a further clarification was provided to CRF on how the volume of total Union sales was calculated. No further comments were provided by CRF on the clarification.
- (20) The comments submitted by CRF were considered and taken into account if and where appropriate in this regulation.

2. RE-EXAMINATION OF THE ISSUES IDENTIFIED BY THE GENERAL COURT

2.1. Product concerned and like or directly competing product

- (21) The General Court found ⁽¹⁰⁾ that milled or semi-milled Indica rice from paddy rice, whether imported into the European Union or produced within the Union, shares identical physical, technical, and chemical characteristics. Both are used for the same purposes, processed by the same operators, distributed through similar channels, and compete with each other. Moreover, consumers generally do not distinguish between Union and imported products, emphasising the equivalence of Union-produced and imported rice. The interchangeability of these rice types, acknowledged by millers, highlights their identical nature regardless of origin. Consequently, according to the General Court, irrespective of the origin of the raw material from which it was processed, milled or semi-milled Indica rice produced in the European Union must be classified as a like or directly competing product of milled or semi-milled Indica rice originating in Cambodia.
- (22) Thus, in view of that finding, the Commission determined that the Indica milled or semi-milled rice produced in the Union is like or directly competing with the product concerned irrespective of the origin of the raw material from which it was processed.
- (23) In accordance with the Judgment, the Commission confirmed that both the Union-produced and the imported Indica milled or semi-milled rice have indeed the same basic physical, technical and chemical characteristics. They have the same uses and are sold via similar or identical sales channels, to the same type of customers. These customers are either retailers or processors in the Union. The product concerned and the like and directly competing product together are referred to as the product under consideration.

⁽⁹⁾ Case T-650/17, *Jinan Meide Casting Co. Ltd.*, EU:T:2019:644, paras. 333–342.

⁽¹⁰⁾ The Judgment, paras. 86-91.

2.2. Definition of the Union industry

- (24) The General Court found that the Commission made a manifest error of assessment by arbitrarily limiting the scope of its investigation concerning the injury caused to the Union Industry solely to millers of milled or semi-milled indica rice processed from paddy rice grown or harvested in the European Union ⁽¹¹⁾.
- (25) In its reassessment, and in light of the General Court's findings, the Commission therefore considered that the Union industry consists of all Union rice millers of Indica rice, irrespective of the origin of the raw material from which it was processed.
- (26) In short, for the purposes of this investigation the Commission defined the Union industry as the Union millers milling or processing Indica paddy or husked rice.
- (27) In light of the changed definition of the Union industry as explained in recital (25) and in order to obtain the additional information deemed necessary to carry out an in-depth re-assessment of the economic and/or financial situation of the Union industry, the Commission launched a new sampling exercise for the Union producers ('rice millers').
- (28) The Commission invited directly or indirectly (through the millers' association) all known Union rice millers to participate in the sampling exercise, including those that had been excluded from the sample in the Regulation at issue because they were only processing imported paddy or husked rice of non-EU origin.
- (29) No additional Union producers replied to the sampling exercise within the time limit. The Commission therefore confirmed the original sample which comprised the following companies: Herba Riceamills, S.L. Ebro Foods; Riso Scotti SPA; Riso Viazzo and Riso Ticino. No parties made any comments on the note confirming the sample ⁽¹²⁾. In 2017 the four producers in the Union which cooperated fully in the investigation produced around 165 000 tonnes of milled and semi-milled Indica rice, which represents 17,5 % of the total estimated Union production of Indica rice (around 944 000 tonnes). Accordingly, the Commission considered this sample as representative.
- (30) To gather the missing data about the non-EU origin raw material (paddy or husked rice), the Commission issued a revised questionnaire to the sampled rice millers. While some rice millers responded by submitting the updated questionnaire, others confirmed the information previously provided during the initial investigation.
- (31) Following final disclosure, the CRF claimed that the Commission failed to adequately implement the Judgment of the General Court with respect to establishing a representative sample of the Union producers, in particular that it did not make sufficient effort to contact Union producers. Therefore, according to the CRF, the Commission's entire assessment of the economic and/or financial situation of the Union industry, in so far as it relates to microeconomic data and findings relating to the sampled Union producers, remained vitiated.
- (32) The Commission rejected these claims. In line with the General Court ruling the Union industry consisted of all Union millers of indica rice irrespective of the origin of the raw material from which it was processed. In its re-opening notice, the Commission made clear that the original investigation resumed at the point at which the irregularity occurred and invited all interested parties to come forward, make their views known, submit information and provide supporting evidence on issues pertaining to the re-opening of the investigation.
- (33) Following the re-opening, the Commission on 15 February 2023 invited the sampled millers of the original investigation to revise their questionnaire replies and submit the relevant data of their production of the product concerned regardless of whether the indica rice used was imported or grown in the EU (t23.000906). The Commission noted that, as a direct consequence of the reopening, the questionnaire submitted previously needed to be updated taking into account 'Indica rice produced on the basis of rice regardless of whether the rice used was imported or grown in the EU'.

⁽¹¹⁾ The Judgment, para. 97.

⁽¹²⁾ Note to the file confirming the sampled of Union rice millers dated 8 March 2023 (t23.001276).

- (34) In addition, the Commission tried to reach all known and unknown millers producing from indica rice. In particular, the Commission directly contacted the known millers located in the United Kingdom and Germany (mainly processing the imported paddy/husked rice), national millers' associations of Italy, Spain and Portugal and the Federation of European Rice Millers asking the associations to inform their members of the new sampling exercise and to encourage them to participate. It has to be recalled, as mentioned in the cover letter of 17 February 2023 (t23.000887) sent to the potentially interested parties, that the purpose of the Commission was to correct the mistake found by the General Court (limiting the scope of the investigation solely to millers of milled or semi-milled Indica rice processed from paddy rice grown or harvested in the EU) and thus enlarge the sample of the Union producers, and not to just replace the sampled companies that had already been selected in the original investigation.
- (35) Given all the Commission's actions as described above, the Commission rejected the claim of CRF that it did not make sufficient efforts to reach Union millers.
- (36) CRF further claimed that companies no longer had reliable records, especially not of the specific data requested by the Commission, to be able to accurately respond to the questionnaire and that this concern implied that the existing sampled Union producers' updated data can hardly be deemed reliable.
- (37) The Commission rejected this claim as unfounded. None of the Union producers invoked difficulties in providing additional data due to the lapse of time between the time of the request and the period considered by the questionnaire. Furthermore, as can be seen from the non-confidential file, the sampled millers were able to resubmit a revised questionnaire, as needed, including data concerning the volumes produced from imported husked and paddy rice.
- (38) CRF claimed that the Union industry was non-cooperative, as only 17,5 % of the Union industry cooperated, and that the Commission should have drawn the appropriate conclusion and terminate the investigation.
- (39) In reply to this claim, the Commission stated that, in the context of a fragmented industry, it considered that a sample consisting 17,5 % of the total Union production of the product concerned was considered sufficiently representative to draw conclusions as far as the micro financial indicators of the Union industry were concerned. Furthermore, there is no provision in the GSP Regulation or in the Commission Delegated Regulation (EU) No 1083/2013 ⁽¹³⁾ on the procedural rules setting a specific level of representativity of the sample. Moreover, three out of the four sampled millers processed paddy/husked rice of non-EU origin. The volume of production of the non-EU origin rice increased over time with a peak of 40 % of the total sample. Thus, the Commission rejected this claim.
- (40) CRF claimed that the sequence by which the Commission contacted the interested parties when carrying out its sampling exercise made the exercise biased towards the companies that were already included in the sample of the original investigation and thus rendered the new sampling exercise invalid.
- (41) The Commission rejected these allegations. First, the re-opening notice invited all interested parties to make their views known and provide information to the Commission. Second, the sequence of the sending of letters had no relevance on the decision on sampling of Union producers. This is emphasised by the fact that the letters that were sent were standard letters inviting parties to cooperate and to submit data. Third, the decision on the sample of Union producers took place on 8 March 2023, well after potential Union producers and their associations were contacted and requested to cooperate. In this sense, the sampling decision was taken once all potentially interested parties had been made aware of the re-opening and had been given opportunities to express their intention to cooperate in the investigation.
- (42) On the basis of the above, the Commission rejected the claims of CRF concerning the sample of the Union millers of indica rice.

⁽¹³⁾ Commission Delegated Regulation (EU) No 1083/2013 of 28 August 2013 establishing rules related to the procedure for temporary withdrawal of tariff preferences and adoption of general safeguard measures under Regulation (EU) No 978/2012 of the European Parliament and the Council applying a scheme of generalised tariff preferences (OJ L 293. 5.11.2013, p. 16).

3. RESULT OF THE REASSESSMENT OF THE UNION INDUSTRY

- (43) Pursuant to Article 23 of the GSP Regulation, the presence of serious difficulties should be determined when Union producers experience a deterioration in their economic and/or financial conditions. In examining whether such deterioration exists, the Commission shall take account, inter alia, of the factors mentioned in Article 23 of the GSP Regulation, where such information is available. Accordingly, the Commission examined the relevant factors in order to determine whether the rice millers suffered serious difficulties.

3.1. Existence of serious difficulties

3.1.1. Union consumption

- (44) The Commission determined the Union consumption using data obtained from Member States and import statistics available through Eurostat. Recognising the high fragmentation of the Union industry and the absence of aggregated EU-wide data on milled rice consumption, the Commission opted for the 'balance sheet methodology' ⁽¹⁴⁾. This methodology has been employed for several years by the Directorate-General for Agricultural and Rural Development to estimate Union consumption not only for rice but for all cereals and oilseeds.
- (45) Using the information available to the Commission, the Union consumption of the product under consideration expressed in milled rice equivalent ('milled equiv.') estimated during the investigation period for the European Union (EU-28) ⁽¹⁵⁾, developed as follows:

Table 1

Consumption (tonnes)

| | MY2012 | MY2013 | MY2014 | MY2015 | MY2016 |
|-------------|-----------|-----------|-----------|-----------|-----------|
| Consumption | 1 502 020 | 1 583 957 | 1 589 263 | 1 628 824 | 1 564 224 |
| Index | 100 | 105 | 106 | 108 | 104 |

Source: EU Member States' submissions and Eurostat (Reference t23.005068 on the open file accessible only for the interested parties).

- (46) The consumption of the product under consideration in the Union fluctuated somewhat during the investigation period. The consumption peaked in MY2015 when it was 8 % higher than at the beginning of the period. Consumption decreased by 4 % between MY2015 and MY2016. Despite this fluctuation consumption grew overall by 4 % during the investigation period.

3.1.2. Increased imports from Cambodia and Myanmar/Burma and their respective market share

- (47) The Commission investigated whether the product concerned is imported in volumes and/or at prices which cause, or threaten to cause, serious difficulties to Union producers of like or directly competing products. In this respect the Commission analysed the imports of the product concerned in the investigation period ⁽¹⁶⁾. The table below shows the development of imports.

⁽¹⁴⁾ An explanation of the methodology applied by Directorate-General for Agricultural and Rural Development is for calculating the Union consumption is available on the following link: https://agriculture.ec.europa.eu/system/files/2019-02/balance-sheet-methodology-for-cereals-oilseeds-rice_en_0.pdf

⁽¹⁵⁾ EU-28 is the abbreviation of the European Union at 28 Member States from the accession of Croatia in 2013 until the withdrawal of the United Kingdom in 2020.

⁽¹⁶⁾ The investigation period, as defined in recital (11) of the Regulation at issue, covered the period from 1 September 2012 to 31 August 2017. The time span from harvest to harvest is also commonly called in agriculture the marketing year ('MY') and for the rice begins the 1 September and end the 31 August of the following year (e.g. MY 2016 = 1 September 2016 to 31 August 2017).

Table 2

Import volume and Union production (tonnes)

| | MY2012 | MY2013 | MY2014 | MY2015 | MY2016 |
|--------------------------------------------------------------|-----------|-----------|-----------|-----------|---------|
| Volume of imports from Cambodia | 163 786 | 224 426 | 248 912 | 298 717 | 253 867 |
| <i>Index</i> | 100 | 137 | 152 | 182 | 155 |
| Volume of imports from Myanmar/Burma | 2 075 | 28 666 | 52 689 | 35 958 | 62 808 |
| <i>Index</i> | 100 | 1 381 | 2 539 | 1 733 | 3 027 |
| Total Cambodia & Myanmar/Burma imports | 165 861 | 253 091 | 301 601 | 334 675 | 316 675 |
| <i>Index</i> | 100 | 153 | 182 | 202 | 191 |
| Estimated Union production ⁽¹⁾ | 1 111 772 | 1 119 099 | 1 029 042 | 1 057 764 | 944 271 |
| <i>Index</i> | 100 | 101 | 93 | 95 | 85 |
| Cambodia imports/Est. Union production | 15 % | 20 % | 24 % | 28 % | 27 % |
| Myanmar/Burma imports/Est. Union production | 0 % | 3 % | 5 % | 4 % | 7 % |
| Total Cambodia & Myanmar/Burma imports/Est. Union production | 15 % | 23 % | 29 % | 32 % | 34 % |

Source: Eurostat (in milled equivalent – Milled equivalent is the result of the conversion of a quantity of paddy, husked or semi milled rice into a corresponding quantity of milled rice. The conversion rates have fixed by the Commission Regulation (EC) No 1312/2008 of 19 December 2008 (OJ L 344, 20.12.2008, p. 56)).

⁽¹⁾ The estimated Union production (see detailed calculation in recital (65)) is calculated by adding the imports to the usable production, deducting the exports of paddy/husked and seeds using the data published in the note for the file on consumption of 30 October 2023 (reference t23.005068) on the open file accessible only for the interested parties.

- (48) Import volumes from Cambodia increased during the investigation period from around 164 000 tonnes to around 254 000 tonnes. They increased significantly until MY2015 and then slightly decreased coinciding with a decrease in consumption in MY2016. Despite the decrease, imports from Cambodia remained 55 % higher than in MY2012.
- (49) As to imports from Myanmar/Burma, they also increased significantly during the investigation period, from around 2 000 tonnes to around 63 000 tonnes. They however remained at a lower level as compared to Cambodia. They experienced a significant surge in MY2013 and MY2014 followed by a slight decrease in MY2015, only to spike again in MY2016, witnessing a remarkable 30-fold increase compared to the beginning of the period.

- (50) Imports from Cambodia increased their share on the estimated Union production from 15 % in MY 2012 to 27 % in MY 2016, therefore gaining 12 percentage points. Imports from Myanmar/Burma increased their share on the estimated Union production from almost nil in MY 2012 to 7 % in MY 2016. Both countries increased trends took place while estimated Union production saw a notable decrease of 15 %. Imports from Cambodia and Myanmar/Burma increased their market share from 15 % in MY 2012 to 34 % in MY 2016, while estimated Union production saw a notable decrease.
- (51) The imports of the product concerned, compared to the total imports into the Union of the product under consideration developed as follows:

Table 3

Import volume and import share (tonnes)

| | MY2012 | MY2013 | MY2014 | MY2015 | MY2016 |
|------------------------------------------------|---------|---------|---------|---------|---------|
| Volume of imports from Cambodia | 163 786 | 224 426 | 248 912 | 298 717 | 253 867 |
| Volume of imports from Myanmar/Burma | 2 075 | 28 666 | 52 689 | 35 958 | 62 808 |
| Volume of imports from the countries concerned | 165 861 | 253 091 | 301 601 | 334 675 | 316 675 |
| Volume of total imports | 430 096 | 531 014 | 596 774 | 630 416 | 632 277 |
| Share of Cambodia imports | 38 % | 42 % | 42 % | 47 % | 40 % |
| <i>Index</i> | 100 | 111 | 110 | 124 | 105 |
| Share of Myanmar/Burma imports | 0,5 % | 6 % | 9 % | 6 % | 10 % |
| <i>Index</i> | 100 | 1 119 | 1 830 | 1 182 | 2 059 |
| Share of imports of the countries concerned | 39 % | 48 % | 51 % | 53 % | 50 % |
| <i>Index</i> | 100 | 124 | 131 | 138 | 130 |

Source: Eurostat (in milled equivalent).

- (52) The import share of the product concerned from Cambodia increased by 5 % during the investigation period from 38 % to 40 % with a peak of 47 % in MY 2015.
- (53) The import share of the product concerned from Myanmar/Burma increased 20-fold during the investigation period from 0,5 % to 10 % in MY 2016.
- (54) The market share of Cambodia and Myanmar/Burma imports, expressed as a percentage on the total Union consumption (see recital (45)), developed as follows:

Table 4

Market share

| | MY2012 | MY2013 | MY2014 | MY2015 | MY2016 |
|------------------------------------------------------|--------|--------|--------|--------|--------|
| Market share of imports from Cambodia | 10,9 % | 14,2 % | 15,7 % | 18,3 % | 16,2 % |
| <i>Index</i> | 100 | 130 | 144 | 168 | 149 |
| Market share of imports from Myanmar/Burma | 0,1 % | 1,8 % | 3,3 % | 2,2 % | 4,0 % |
| <i>Index</i> | 100 | 1 310 | 2 400 | 1 598 | 2 907 |
| Market share of imports from the countries concerned | 11,0 % | 16,0 % | 19,0 % | 20,5 % | 20,2 % |
| <i>Index</i> | 100 | 145 | 172 | 186 | 183 |

Source: EU Member States' submissions and Eurostat.

- (55) Cambodia increased its market share from 10,9 % to 16,2 % while the market share of Myanmar/Burma increased from 0,1 % to 4 %. The combined market share almost doubled during the investigation period, rising from 11 % to 20,2 %, and remained consistently high towards the end of the investigation period.

3.1.3. Import prices

- (56) The development of the average price (CIF at EU border) of the product imported from Cambodia and Myanmar/Burma shows the following trends:

Table 5

Import prices (EUR/tonne)

| | MY2012 | MY2013 | MY2014 | MY2015 | MY2016 |
|--------------------------------------------------------|--------|--------|--------|--------|--------|
| Cambodia price (EUR/tonne) | 588,4 | 512,9 | 562,6 | 547,4 | 552,2 |
| <i>Index</i> | 100 | 87 | 96 | 93 | 94 |
| Myanmar/Burma price (EUR/tonne) | 420,0 | 366,5 | 414,7 | 410,1 | 405,4 |
| <i>Index</i> | 100 | 87 | 99 | 98 | 97 |
| Countries concerned weighted average price (EUR/tonne) | 586,3 | 496,3 | 536,7 | 532,6 | 523,1 |
| <i>Index</i> | 100 | 85 | 92 | 91 | 89 |

Source: Eurostat.

- (57) The import price of the product concerned originating in Cambodia decreased by 6 % during the investigation period, while that originating in Myanmar/Burma decreased by 3 % during the same period. Import prices from Myanmar/Burma remained consistently lower than those of Cambodia. The combined weighted average import price decreased by 11 % over the investigation period.

- (58) The import price of the product concerned was lower than the Union sales price of the like and directly competing product throughout the investigation period. The difference between the import price from Cambodia and the Union industry's sales price increased from 17 % in MY2012 to 30 % in MY2016, while the difference between the import price of Myanmar/Burma and the Union industry's sales price increased from 41 % in MY 2012 to 49 % in MY2016. Since in general, consumers do not make any distinction between various origin of Indica rice, the price difference between Cambodia and Myanmar/Burma prices and the prices of the Union rice millers (see recital (98)) are significant enough, for Cambodia and Myanmar/Burma imports, to exercise pressure on the Union prices.
- (59) In conclusion, imports from Cambodia increased substantially in absolute terms (55 %, see recital (47)) as well as in terms of market share + 5,3 percentage points (from 10,9 % to 16,2 %, see recital (54)) during the investigation period. Even if the import volume (see recital (51)) decreased in MY2016 compared to MY2015 (from 298 717 tonnes to 253 867 tonnes), it remained significantly higher than the import volume at the beginning of the investigation period (163 786 tonnes). Additionally, the import price of the product concerned decreased significantly from 588,4 to 552,2 EUR/ton (see Table 5 in recital (56)) during the investigation period. This import price was lower than both the Union industry's sales price and its cost of production throughout the entire period considered (see recital (78)). Thus, in terms of high volumes and prices, imports of Indica rice originating in Cambodia exercised pressure on the economic performance of the Union rice millers during the investigation period.
- (60) Imports from Myanmar/Burma increased exponentially in absolute terms (3 027 %, see recital (47)) as well as in terms of market share + 3,9 percentage points (from 0,1 % to 4,0 % – see recital (54)) during the investigation period. Even if the import volume (recital (51)) decreased slightly in MY2015 compared to MY2014 (from 52 689 tonnes to 35 958 tonnes), it picked up again in MY 2016 at 62 808 tonnes which was 30 times higher than the import volume at the beginning of the investigation period (2 075 tonnes). Additionally, the import price of the product concerned decreased from 428,8 to 413,9 EUR/ton (see Table 5 in recital (56)) during the investigation period. Also the import price from Myanmar/Burma was significantly lower than both the Union industry's sales price and its cost of production throughout the entire period considered (see recital (78)) even lower than the imports price from Cambodia. Despite the lower volume of imports of Indica rice originating from Myanmar/Burma, considering the steep increase, they also exercised pressure on the economic performance of the Union rice millers during the investigation period.
- (61) The analysis is the same when the effects of imports from Myanmar/Burma and Cambodia are looked at together. Both in terms of volumes and prices, imports of Indica rice originating in Cambodia and Myanmar/Burma exercised pressure on the economic performance of the Union rice millers during the investigation period.

3.1.4. *Economic situation of the Union industry*

- (62) Certain factors, including market share, production, imports and import prices, were sourced from macro statistical data, while others (such as sampled miller production, production capacity and capacity utilisation, sales prices, cost of production, profitability, employment and stocks) relied on responses from the sampled Union producers through questionnaires.

3.1.5. *Union industry's market share*

- (63) The Union industry's sales volume and market share during the investigation period developed as follows:

Table 6

Union consumption and market share

| | MY2012 | MY2013 | MY2014 | MY2015 | MY2016 |
|-------------|-----------|-----------|-----------|-----------|-----------|
| Consumption | 1 502 020 | 1 583 957 | 1 589 263 | 1 628 824 | 1 564 224 |
| Index | 100 | 105 | 106 | 108 | 104 |

| | | | | | |
|--------------|--------|--------|--------|--------|--------|
| Market share | 71,4 % | 66,5 % | 62,4 % | 61,3 % | 59,6 % |
| Index | 100 | 93 | 88 | 86 | 83 |

Source: EU Member States' submissions, Eurostat and sampled Union producers' questionnaires.

- (64) Despite the increase in Union consumption by 4 % between MY2012 and MY 2016, the Union industry's market share dropped significantly from 71,4 % to 59,6 %, (– 17 %). Therefore, the Union industry was not able to take full advantage of the expansion in Union consumption until MY2015 and its market share further decreased in MY2016.

4. PRODUCTION

- (65) The estimated Union production developed as follows:

Table 7

Production (in milled equivalent of tonnes)

| | MY2012 | MY2013 | MY2014 | MY2015 | MY2016 |
|----------------------------------------------|-----------|-----------|-----------|-----------|---------|
| Usable production of paddy rice in the Union | 685 183 | 676 984 | 545 677 | 447 255 | 423 963 |
| – Rice seeds | 12 071 | 10 292 | 8 415 | 7 592 | 8 541 |
| + Imports raw material (paddy/Husked) | 440 153 | 454 852 | 493 894 | 619 786 | 530 946 |
| – Exports raw material (paddy/Husked) | 1 493 | 2 445 | 2 115 | 1 686 | 2 098 |
| Estimated Union production | 1 111 772 | 1 119 099 | 1 029 042 | 1 057 764 | 944 271 |
| Index | 100 | 101 | 93 | 95 | 85 |

Source: EU Member States' submissions and Eurostat.

- (66) The estimated Union production decreased considerably, by 15 % in relative terms and by 167 501 tonnes in absolute terms, from 1 111 772 to 944 271 tonnes, during the investigation period.
- (67) Following the final disclosure, CRF claimed that production data did not take into account stocks of paddy and husked rice nor other uses for the paddy or husked rice and therefore CRF questioned the reliability of the production data.
- (68) Indeed, the Commission did not take into consideration stock when estimating Union production as shown in Table 7. However, the purpose of this exercise was not to establish precise production quantity but rather to show the trend. The negative trend visible in Table 7 is further confirmed by the evolution of the production quantity reported by the sampled Union producer as shown in Table 8. In its estimation, the Commission assumed that everything harvested in a given marketing year was milled in the same year, in this theoretical calculation the beginning and ending stock of the raw material have been mutually eliminated from the equation. It is the Commission opinion that the methodology applied to estimate the total Union production is appropriate and that a small addition or subtraction of stocks quantities of the raw material unprocessed withing the marketing year would not have changed the production trend of the period.

- (69) Regarding the possible deduction of paddy for other uses from the estimated production, the Commission was not aware of other potential usage for paddy or husked rice beyond the seeds which it deducted in its calculation. Moreover, CRF failed to substantiate its claim on other possible usages and how the data used by the Commission would be tainted. Therefore, this claim is rejected.

4.1.1. Production capacity and capacity utilisation

- (70) The production capacity by the sampled Union producers for the product concerned also showed a decreasing trend. It decreased by 10 % over the investigation period.

Table 8

Production, production capacity and capacity utilisation

| | MY2012 | MY2013 | MY2014 | MY2015 | MY2016 |
|----------------------|---------|---------|---------|---------|---------|
| Production capacity | 304 231 | 304 231 | 304 231 | 304 231 | 304 231 |
| <i>Index</i> | 100 | 100 | 100 | 100 | 100 |
| Production | 183 581 | 180 387 | 184 891 | 167 505 | 165 080 |
| <i>Index</i> | 100 | 98 | 101 | 91 | 90 |
| Capacity utilisation | 60,3 % | 59,3 % | 60,8 % | 55,1 % | 54,3 % |
| <i>Index</i> | 100 | 98 | 101 | 91 | 90 |

Source: Sampled Union producers.

- (71) The capacity utilisation for the product concerned decreased from 60,3 % to 54,3 %.

4.1.2. Stocks

- (72) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 9

Stocks (tonnes)

| | MY2012 | MY2013 | MY2014 | MY2015 | MY2016 |
|---------------------------------------------|---------|---------|---------|---------|---------|
| Closing Stocks | 12 378 | 10 989 | 15 299 | 10 138 | 20 002 |
| <i>Index</i> | 100 | 89 | 124 | 82 | 162 |
| Production | 183 581 | 180 387 | 184 891 | 167 505 | 165 080 |
| Closing stock as a percentage of production | 7 % | 6 % | 8 % | 6 % | 12 % |
| <i>Index</i> | 100 | 90 | 123 | 90 | 180 |

Source: Sampled Union producers.

- (73) Closing stocks, while fluctuating, increased by 62 % during the investigation period from 12 378 tonnes to 20 002 tonnes. The Union industry was unable to reduce the volume of the closing stocks despite the growing demand (see recital (45)) faced with the competing low prices of imports from Cambodia and Myanmar/Burma. Closing stocks expressed as percentage of production also increased in the investigation period by 80 %.

4.1.3. Sales volume

- (74) Sales volume of the sampled Union producers developed over the period considered as follows:

Table 10

Sales volume (tonnes)

| | MY2012 | MY2013 | MY2014 | MY2015 | MY2016 |
|--------------------------------------------------------|-----------|-----------|---------|---------|---------|
| Total sales volume in the Union | 1 071 923 | 1 052 943 | 992 488 | 998 408 | 931 947 |
| <i>Index</i> | 100 | 98 | 93 | 93 | 87 |
| Sales volume on the Union market – unrelated customers | 205 626 | 200 999 | 202 131 | 186 139 | 179 069 |
| <i>Index</i> | 100 | 98 | 98 | 91 | 87 |

Source: Sampled Union producers, EU Member States' submissions and Eurostat.

- (75) The sales volume in the Union to unrelated customers of the Union producers decreased by 13 %. The total Union sales of the whole industry follows a slightly different trend but ending with the same result (namely, a decrease of 13 %).
- (76) Following final disclosure, CRF claimed that the Commission failed to explain how it calculated the total sales volume of the Union producers and had not disclosed the source data.
- (77) In response to this claim the Commission confirmed to CRF, by email on 11 January 2024, that all underlying data used by the Commission to determine the macroeconomic indicators had already been made available to all interested parties on 30 October 2023 on the open file (t23.005068) and following some comments in a second version on 20 December 2023 (t23.006965). On the basis of the data included in the two aforementioned files, the Commission calculated the Union sales by deducting the import volume from third countries from the total Union consumption.

4.1.4. Sales price, cost of production and profitability

- (78) The weighted average unit sales price of the sampled rice millers to unrelated customers in the Union, their cost of production and their profitability developed over the period considered as follows:

Table 11

Sales prices, cost of production and profitability

| | MY2012 | MY2013 | MY2014 | MY2015 | MY2016 |
|---------------------------------------------------|--------|--------|--------|--------|--------|
| Average unit sales price in the Union (EUR/tonne) | 723,8 | 729,7 | 767,3 | 786,7 | 805,3 |
| <i>Index</i> | 100 | 101 | 106 | 109 | 111 |
| Unit cost of production (EUR/tonne) | 719 | 704 | 725 | 759 | 815 |
| <i>Index</i> | 100 | 98 | 101 | 106 | 113 |

| | | | | | |
|---------------|-------|-------|-------|-------|---------|
| Profitability | 0,7 % | 3,5 % | 5,6 % | 3,6 % | – 1,2 % |
| Index | 100 | 516 | 809 | 521 | – 175 |

Source: Sampled Union producers (The data provided by the Union producers is based on calendar years and not marketing years. Given the fact that there is significant overlap between these periods, the trends nevertheless remain representative for the investigation period).

- (79) The cost of production of the sampled rice millers increased significantly during the investigation period, by 6 % in MY2015, and 13 % in MY2016.
- (80) The unit prices of the sampled rice millers increased by 11 % during the investigation period. At the same time, the cost of production increased by 13 % during the same period. The Union industry was not able to raise its prices in accordance with the increase in its cost of production and thus became loss making by the end of the investigation period.
- (81) The profitability of the Union industry fluctuated during the investigation period starting at break even in MY2012, then increasing and reaching a peak of 5,6 % in MY 2014 and taking a downward turn and reaching – 1,2 % in MY 2016 (see recital (78)). This trend can be explained by the fact that the Union industry was not able to increase its prices to sufficiently cover the increase in its costs as shown in the table above.

4.1.5. Employment

- (82) Employment developed as follows during the investigation period:

Table 12

Employment

| | MY2012 | MY2013 | MY2014 | MY2015 | MY2016 |
|---------------------|--------|--------|--------|--------|--------|
| Number of employees | 224 | 223 | 176 | 151 | 158 |
| Index | 100 | 99 | 78 | 67 | 70 |

Source: Sampled Union producers' questionnaires.

- (83) The total number of employees decreased by 30 % during the investigation period.

4.1.6. Bankruptcies

- (84) The Commission does not have any evidence on bankruptcies during the investigation period as regards Union producers.

4.2. Conclusion on the existence of serious difficulties

- (85) In the investigation period the situation of the Union industry deteriorated both in economic and financial terms.
- (86) The Union industry could not benefit from the overall 4 % increase in consumption and lost 17 % of its market share. At the same time the market share increased respectively by 5,3 % from Cambodia and by 3,9 % from Myanmar/Burma. In absolute terms, the market share of the Union industry decreased from 71,4 % in the MY 2012 to 59,6 % in the MY 2016. Production, sales volumes, capacity utilisation, and employment all decreased. Stocks also increased, faced with the pressure of imports of Indica rice from Cambodia and Myanmar/Burma at prices even below the Union rice millers' cost of production.

- (87) The production in the Union decreased by 15 %. The economic difficulties therefore mainly materialised in terms of loss of volume of sales and the price pressure exercised by Cambodian and Myanmar/Burma imports. The Union industry's cost of production increased at a higher pace than the increase of its sales price. In MY2016, the Union rice millers incurred losses due to significant volumes of low-priced imports from Cambodia and Myanmar/Burma. The Union rice millers had to sell below cost of production to compete on the market.
- (88) On the basis of the above, the Commission concluded that the Union industry suffered deterioration in its economic and financial situation within the meaning of Article 23 of the GSP-Regulation.
- (89) Following disclosure, CRF submitted comments expressing concerns regarding the reliability of certain factors, in particular concerning market share, total Union sales, sales prices and profitability, as new data gathered for the purposes of the re-opened investigation differed or showed a different trend than the economic factors in the Regulation at issue.
- (90) The Commission considered these comparisons irrelevant and thus rejected these comments because, as explained in recital (8), the Regulation at issue was annulled by the General Court. Furthermore, as the definition of the product concerned and thus the Union industry differed in the two investigations, the data used to establish the various economic factors are also different and therefore became incomparable. In any event, the relevant legal test of the re-opened investigation was not to establish the economic situation of the Union millers of indica rice, compared to Union millers of the original Regulation, but to establish whether or not the Union producers as defined by recital (26) suffered economic difficulties.

4.3. Analysis of causation factors

- (91) Once the Commission established that the Union rice millers suffered deterioration in its economic and financial situation within the meaning of Article 23 of the GSP-Regulation, the Commission examined whether there was a causal link between the imports of the product concerned, on the one hand, and the serious difficulties of the Union rice millers, on the other hand. The Commission also analysed whether the serious difficulties were not attributable to factors other than imports from Cambodia and Myanmar/Burma.

4.3.1. *Effects of imports from Cambodia*

- (92) The table and the graphs below clearly establish a coincidence in time between the evolution of imports from Cambodia and the situation of the Union industry, evidenced by a substantial loss of market shares, causing serious difficulties to the Union rice millers.

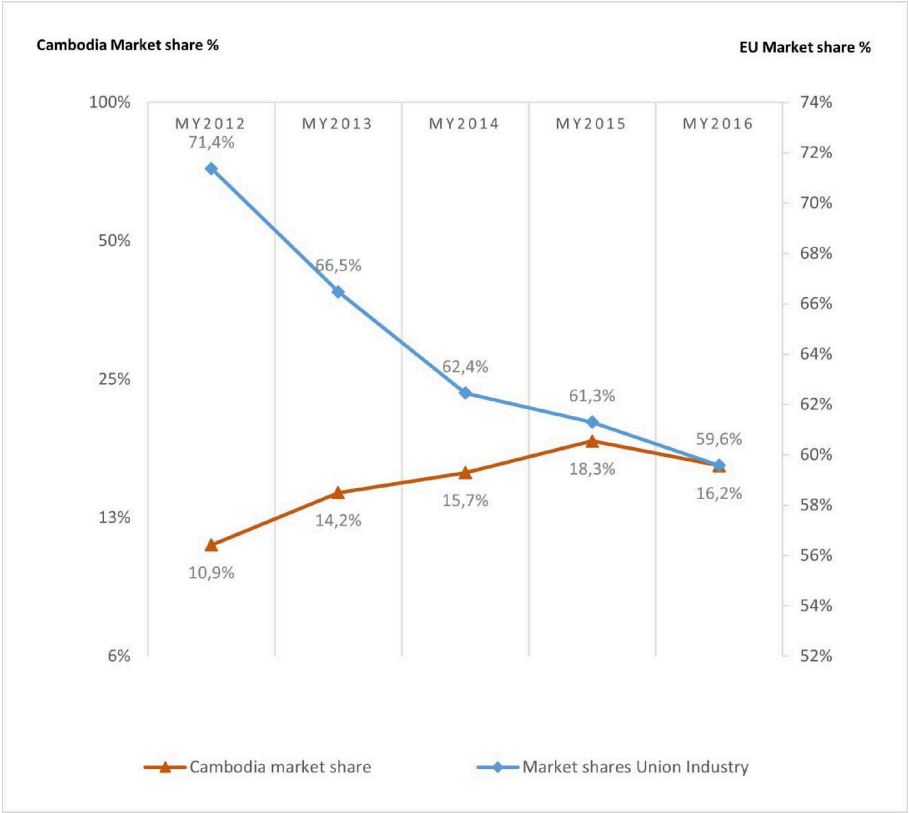
Table 13a

Market share

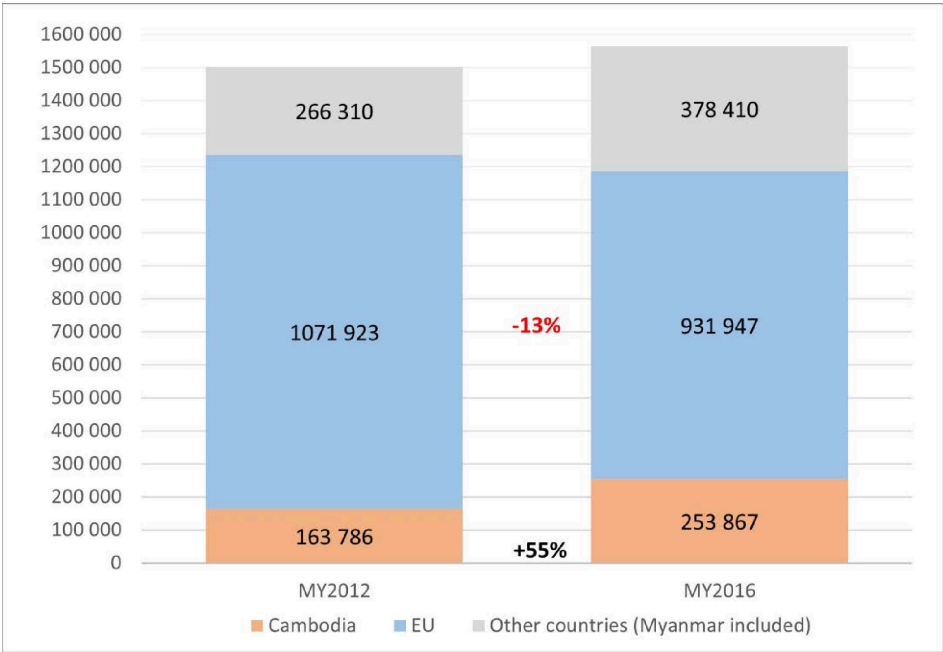
| | MY2012 | MY2013 | MY2014 | MY2015 | MY2016 |
|------------------------------------|--------|--------|--------|--------|--------|
| Market share of the Union industry | 71,4 % | 66,5 % | 62,4 % | 61,3 % | 59,6 % |
| Cambodia market share | 10,9 % | 14,2 % | 15,7 % | 18,3 % | 16,2 % |

Source: EU Member States' submissions and Eurostat.

Graph 1a
Market share evolution (in percentages)



Graph 2a
Market share evolution (in tonnes)



- (93) The volume of imports from Cambodia increased by more than 90 000 tonnes during the investigation period. This increase of imports from Cambodia significantly outpaced the increase of consumption in the Union market (that was limited to 62 000 tonnes, corresponding to + 4 % increase) and prevented the Union industry to increase its volume of sales in accordance with the increase in consumption.

4.3.2. Effects of imports from Myanmar/Burma

- (94) Also the table and the graphs below clearly establish a coincidence in time between the evolution of imports from Myanmar/Burma and the situation of the Union industry, evidenced again by a substantial loss of market shares, causing serious difficulties to the Union rice millers.

Table 13b

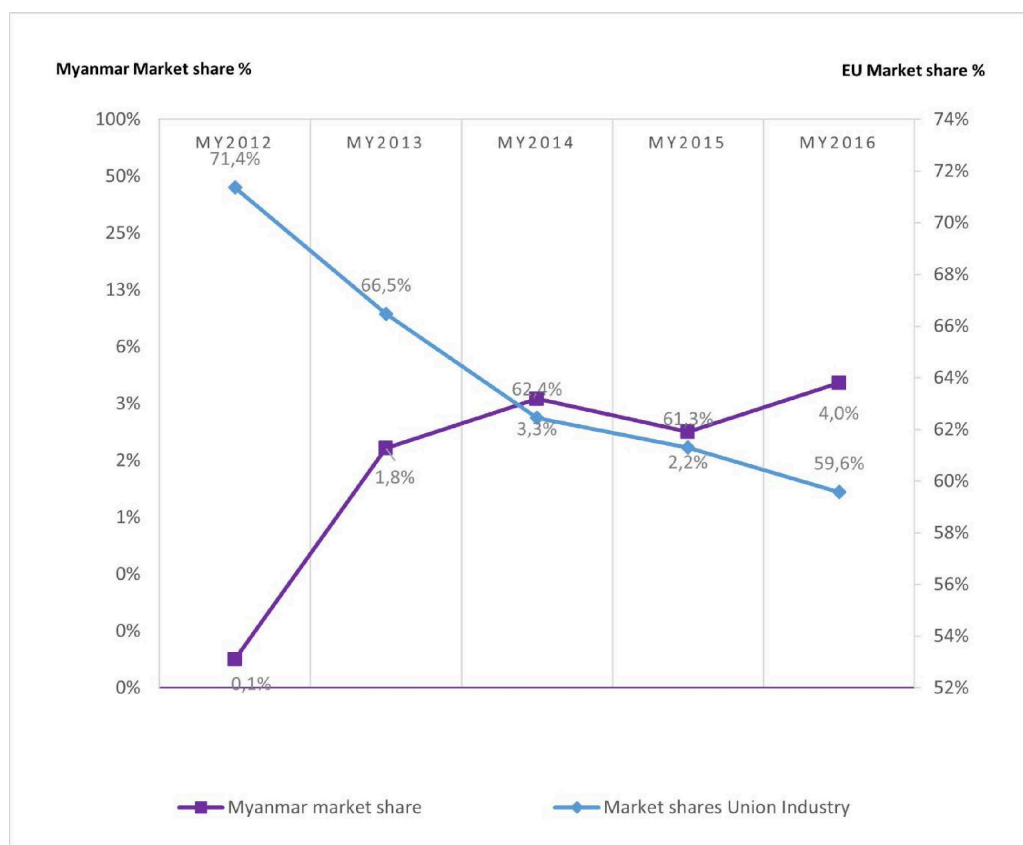
Market share

| | MY2012 | MY2013 | MY2014 | MY2015 | MY2016 |
|------------------------------------|--------|--------|--------|--------|--------|
| Market share of the Union industry | 71,4 % | 66,5 % | 62,4 % | 61,3 % | 59,6 % |
| Myanmar/Burma market share | 0,1 % | 1,8 % | 3,3 % | 2,2 % | 4,0 % |

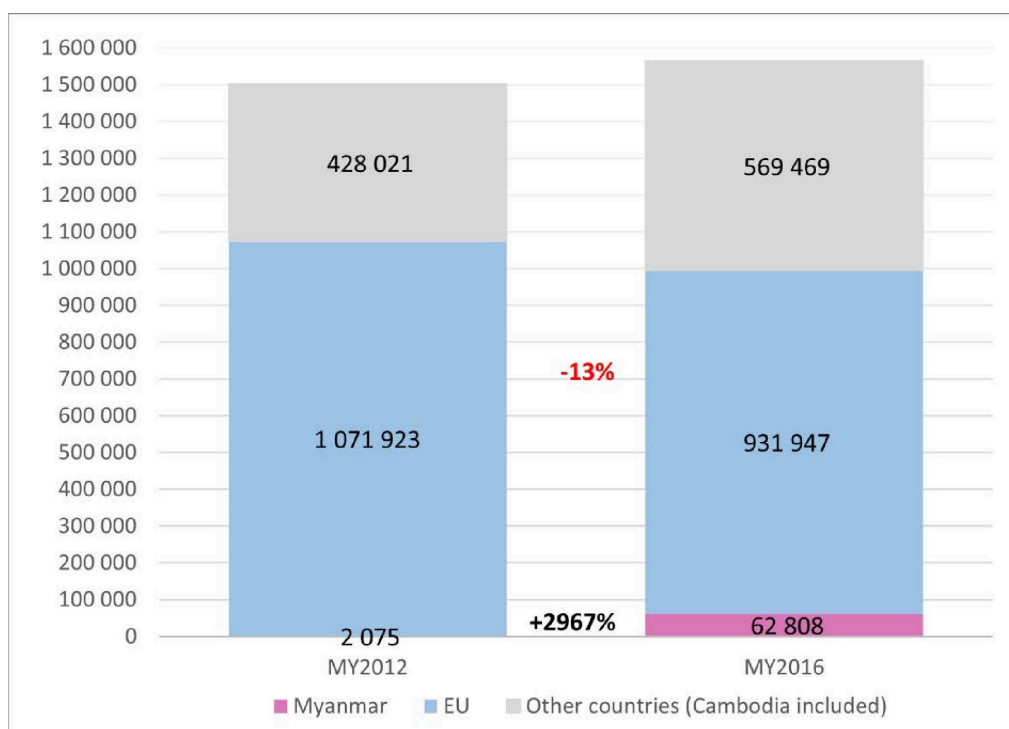
Source: EU Member States' submissions and Eurostat.

Graph 1b

Market share evolution (in percentages)



Graph 2b

Market share evolution (in tonnes)

- (95) The volume of imports from Myanmar/Burma increased by around 60 000 tonnes during the investigation period. Such increase of imports from Myanmar/Burma almost matched the increase of consumption in the Union market (that was limited in total to 62 000 tonnes, corresponding to a 4 % increase) and prevented the Union industry to increase its volume of in accordance with the increase in consumption.
- (96) The 5,3 percentage points gained in market share by Cambodia, and the 3,9 percentage points gained in market share by Myanmar/Burma, coincided with 11,8 percentage points loss of market share of the Union industry, from 71,4 % in MY2012 to 59,6 % in MY2016. This gain in market share by the low-priced imports came therefore at the expense of the Union industry.

4.3.3. Price and cost evolution

- (97) As explained above in recitals (45), (92)-(96), the increase in the consumption level towards the end of the investigation period coincided with an even bigger and important increase in imports of the product concerned from each country, Cambodia and Myanmar/Burma. This surge in low-priced imports, capitalising on the growing consumption, saturated the Union market and reduced the market share of the Union rice millers, which could not compete with import prices which were even lower than its costs of production.
- (98) Indeed, the increase in imports was due to their low prices. The import price of the product concerned was continuously lower than the average sales price of the like and directly competing product during the investigation period. In addition, the average import price was also significantly lower than the average cost of production of the Union rice millers throughout the investigation period. The table below show the detailed price difference between import price from Cambodia and Myanmar/Burma and the sales price and cost of production of the Union industry:

Table 14

Prices and costs comparison

| | MY2012 | MY2013 | MY2014 | MY2015 | MY2016 |
|---------------------------------------------------|--------|--------|--------|--------|--------|
| Average unit sales price in the Union (EUR/tonne) | 723,8 | 729,7 | 767,3 | 786,7 | 805,3 |
| Unit cost of production (EUR/tonne) | 718,9 | 703,8 | 724,7 | 758,6 | 815,0 |
| Cambodia import price (EUR/tonne) | 600,8 | 523,6 | 574,4 | 558,9 | 563,8 |
| Myanmar/Burma import price (EUR/tonne) | 428,8 | 374,2 | 423,4 | 418,7 | 413,9 |
| Cambodia price difference (in %) | 17,0 | 28,2 | 25,1 | 29,0 | 30,0 |
| Myanmar/Burma price difference (in %) | 40,8 | 48,7 | 44,8 | 46,8 | 48,6 |

Source: Sampled Union producers, Eurostat (The Cambodian and Myanmar/Burma prices have been increased by adding post-importation costs (at a level of 2,1 %) in order to make a comparable price at EU border).

- (99) The price difference between the Cambodian import price and the Union industry's sales price increased from 17 % in MY2012 to 30 % in MY2016, while the difference between the import price of Myanmar/Burma and the Union industry's sales price increased from 41 % in MY 2012 to 49 % in MY2016. These low-priced imports from the countries concerned caused significant price suppression. As a result, the Union rice millers could not increase their sales price sufficiently to cover their cost of production in MY 2016, putting more pressure on their financial performance and thus becoming loss making by the end of the investigation period.
- (100) On the basis of the above, the Commission concluded that there is a causal link between the imports from the countries concerned and the serious difficulties suffered by the Union industry.
- (101) Following final disclosure, CRF claimed that the Commission's determination of serious difficulties was based on a cumulative assessment of the volume and price effects of rice imports from Cambodia and Myanmar/Burma.
- (102) The Commission considered that it properly examined the volume and price effects of rice imports from Cambodia and Myanmar/Burma separately as well as cumulatively in the final disclosure. Yet, for the sake of clarity, the Commission reviewed its determination to clearly separate and make distinguish the effects of the Cambodian imports from Myanmar/Burma's imports. To this effect, on 29 January 2024 the Commission sent an additional partial disclosure ('additional partial disclosure') to CRF limited to the result of the assessment of the Union industry serious difficulties (section 3 of the Regulation) and allowed for comments.
- (103) Following the additional partial final disclosure, CRF was of the opinion that the Commission first failed to make a separate Cambodian assessment of the indica rice volume and price effects on the Union market and second the Commission should have disclosed the entire second General Disclosure Document and not only the result of the reassessment of the Union industry.

- (104) As regards the claim on the cumulative assessment, the Commission rejected the claim made by CRF, first because the Commission performed a separate analysis of the effect of the Cambodian import volumes and prices on the Union market from the analysis of Myanmar/Burma; second, CRF has not substantiated why and how the Commission has failed to make a proper individual analysis, considering that all individual indicators were present.
- (105) As regards the second part of the CRF's claim, concerning a new entire second General Disclosure Document, the Commission in reaction to the comment made by CRF as to the lack of separate analysis of Cambodia and Myanmar/Burma's imports, for the sake of clarity, considered appropriate to make a second disclosure only of the part affected by the CRF's claim on the cumulative assessment and because it has further underlined the individual analysis for Cambodia, and Myanmar/Burma, in respect of the Union producers' deterioration of their economic and/or financial conditions.
- (106) The Commission concluded, in particular, that Cambodian imports when compared to Myanmar/Burma were more substantial in volumes, reaching a higher market share and were priced lower than milled Indica rice of the Union producers. Additionally, while Myanmar/Burma imports were lower in volumes than those of Cambodia, they were at even lower prices than those of Cambodia. Thus, it is clear that assessed either combined or separately both sources of imports caused the serious difficulty to the Union producers.
- (107) CRF claimed that the Commission in its final disclosure should have provided an undercutting analysis. Therefore, CRF requested that the Commission provides an additional final disclosure containing the missing undercutting analysis.
- (108) The Commission recalled that Article 22(1) of the GSP Regulation does not require any undercutting analysis and it refers only to imports in 'volume and/or prices' causing serious difficulties to the Union producers of the like and directly competing products.
- (109) Furthermore, the General Court in paragraph 113 of the Judgment explicitly acknowledged that the GSP Regulation does not lay down an express obligation to carry out an analysis of price undercutting or of the calculation method as regards the determination of the effect of imports. The General Court concluded in paragraph 115 of the Judgment that there are several methods of analysis for examining whether the conditions laid down in Articles 22 and 23 of the GSP Regulation are satisfied and the Commission has some discretion when it chooses the method by which it must ascertain whether those conditions are satisfied by choosing between different methods of calculation.
- (110) In line with the above the Commission in this re-opened investigation decided not to carry out an undercutting analysis but to compare the price development of the product concerned and the like and directly competing products and the cost of production of the Union producers. The Commission considered that the analysis of the price and costs comparison made in Table 14 is an appropriate method to make the appraisal regarding serious difficulties of the Union producers. Therefore, the claim to perform an undercutting analysis is rejected.

4.3.4. *Other factors*

- (111) The Commission also assessed whether other factors may have contributed to the serious difficulties suffered by the Union rice millers. In particular, the Commission examined the impact of imports from third countries in the economic and financial deterioration of the Union rice millers.

(112) The volume of imports from other third countries developed over the period considered as follows:

Table 15

Imports from other third countries

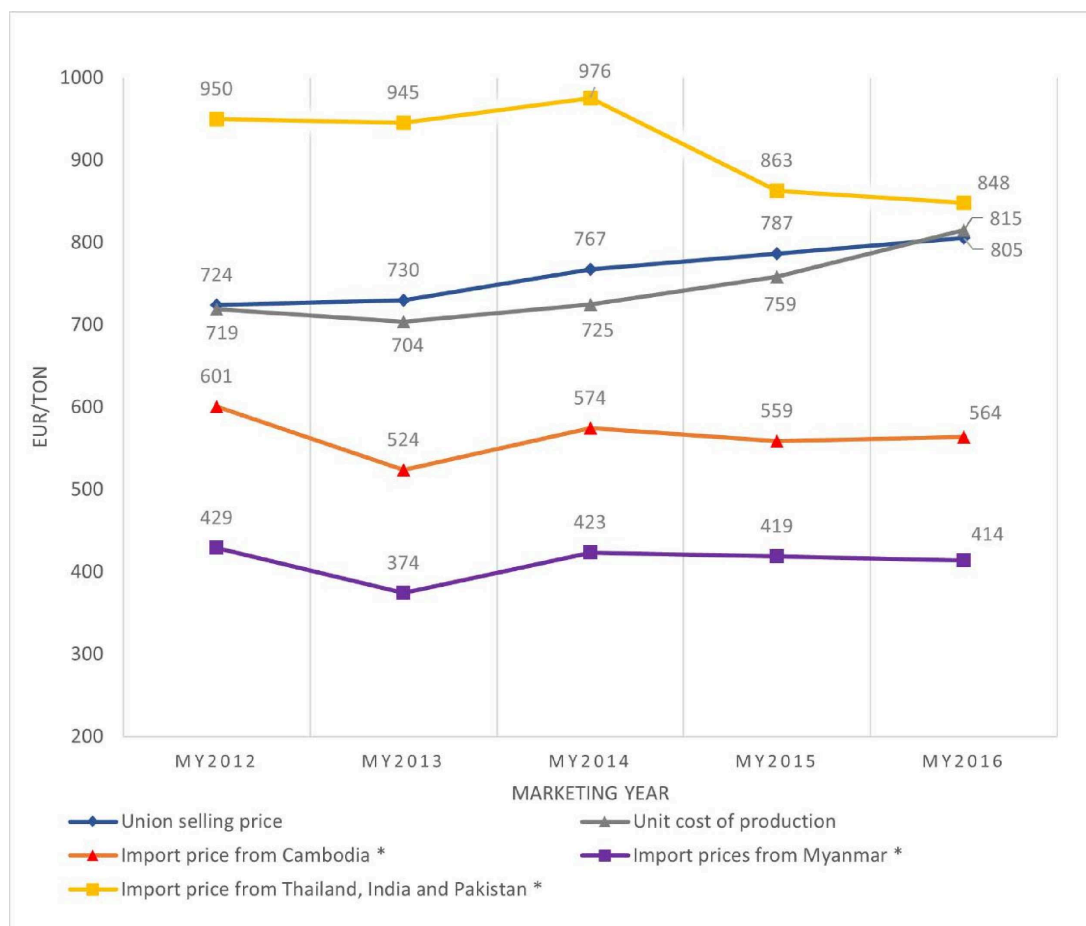
| Country | | MY2012 | MY2013 | MY2014 | MY2015 | MY2016 |
|----------------------------------------------------------------------------------------------|---------------|---------|---------|---------|---------|---------|
| Thailand | volume | 137 240 | 138 540 | 136 370 | 141 263 | 150 409 |
| | index | 100 | 101 | 99 | 103 | 110 |
| | Market share | 9,1 % | 8,7 % | 8,6 % | 8,7 % | 9,6 % |
| | average price | 939 | 861 | 893 | 822 | 741 |
| | index | 100 | 92 | 95 | 88 | 79 |
| India | volume | 53 326 | 47 083 | 64 992 | 72 373 | 79 683 |
| | index | 100 | 88 | 122 | 136 | 149 |
| | Market share | 3,6 % | 3,0 % | 4,1 % | 4,4 % | 5,1 % |
| | average price | 913 | 1 056 | 1 058 | 893 | 959 |
| | index | 100 | 116 | 116 | 98 | 105 |
| Pakistan | volume | 27 438 | 35 201 | 37 634 | 34 991 | 32 616 |
| | index | 100 | 128 | 137 | 128 | 119 |
| | Market share | 1,8 % | 2,2 % | 2,4 % | 2,1 % | 2,1 % |
| | average price | 921 | 1 003 | 1 004 | 838 | 926 |
| | index | 100 | 109 | 109 | 91 | 101 |
| Thailand, India, Pakistan aggregated | volume | 218 004 | 220 824 | 238 996 | 248 627 | 262 708 |
| | index | 100 | 101 | 110 | 114 | 121 |
| | Market share | 14,5 % | 13,9 % | 15,0 % | 15,3 % | 16,8 % |
| | average price | 930 | 926 | 955 | 845 | 831 |
| | index | 100 | 100 | 103 | 91 | 89 |
| All third countries (including Thailand, India, Pakistan) but not Cambodia and Myanmar/Burma | volume | 264 235 | 277 922 | 295 174 | 295 741 | 315 602 |
| | index | 100 | 105 | 112 | 112 | 119 |
| | Market share | 17,6 % | 17,5 % | 18,6 % | 18,2 % | 20,2 % |
| | average price | 860 | 837 | 879 | 802 | 775 |
| | index | 100 | 97 | 102 | 93 | 90 |

Source: Eurostat.

- (113) Imports from all third countries (which represent 50 % of the total imports of the product concerned in the Union) except the countries concerned, increased by 19 % over the period considered in absolute terms and gained 2,6 % of market share (percentages based on data in milled equivalent).
- (114) Even if imports from other third countries may partially explain the decrease in Union market shares, the increase of 2,6 percentage points in market share of these other third countries' imports (from 17,6 % to 20,2 %), even cumulatively, is lower than the increase in market share of Cambodia, 5,3 percentage points (from 10,9 % to 16,2 %) and Myanmar/Burma, 3,9 percentage points (from 0,1 % to 4,0 %) (See Table 4 above).

Graph 3

Price and costs comparison



(*) EUR/ton including post-importation costs at the level of 2,1 %.

- (115) Upon a detailed analysis of imports from third countries, the Commission observed that the major exporting countries like Thailand, India and Pakistan (amounting to 41 % of the total Indica rice imports into the Union in the last year of the investigation) have considerably higher average prices for the product concerned compared to imports from Cambodia and Myanmar/Burma, as well as Union selling prices. Imports from those major exporting countries therefore are not causing serious difficulties to the Union producers.
- (116) The price difference between imports from all third countries and imports from Cambodia and Myanmar/Burma also reinforces the conclusion that lower prices in significant import volumes allowed Myanmar/Burma and Cambodia to rapidly expand their Union exports during the investigation period putting the Union rice millers into

serious difficulties in economic and financial terms. The Commission observes that Cambodia, Myanmar/Burma, Thailand, India, and Pakistan represented between 89 % and 92 % of the total imports during the investigation period. However, as noted in recital (51), total volume imports from Cambodia represented 42 % of the total share of imports throughout the investigation period. The share of the Myanmar/Burma corresponds to 6,5 %.

- (117) On this basis, the Commission concluded that even if imports from all third countries might have contributed to a limited extent to the economic deterioration suffered by the Union industry, it did not attenuate the causal link established with the imports from Cambodia or Myanmar/Burma.
- (118) Following final disclosure, CRF claimed that the total lack of analysis of the impact of japonica rice on the Union millers of indica rice vitiates the entire causation analysis. Furthermore, CRF claimed that rice millers use the same machinery to mill indica and japonica rice, and it is an established fact that millers can easily switch between the two rice types, and that the Commission should provide a complementary analysis of the japonica rice market assessing the production volume, utilisation capacity, profit and employment.
- (119) The Commission noted that CRF did not substantiate its claim that the Commission should have complemented its causation analysis with the assessment of the japonica rice market. CRF, beyond a simple statement, failed to submit any evidence as to the relevance of the development of the milled japonica rice market to the economic situation of the Union producers of milled indica rice. Moreover, even assuming that millers can easily switch between indica and japonica rice, the data examined by the Commission showed that no adaptation took place since the Union industry suffered serious difficulties because of the imports of indica rice. In other words, even if production of japonica increased in MY 2015 and MY2016 after a decline in the period MY 2012 to 2014, such a development did not attenuate the causal link established between imports of indica and the serious difficulties found. Therefore, this claim is rejected as unsubstantiated.
- (120) CRF claimed that there was no coincidence in time between the evolution of imports and the deterioration of the Union industry's situation in terms of profitability as from 2015/2016 to 2016/2017.
- (121) The Commission noted that CRF singled out one year from the period of investigation and presented it in an isolated manner, out of context. However, the assessment of serious difficulties looks into trends of several consecutive years as mandated by Article 10(1)(c) of Delegated Regulation (EU) No 1083/2013. Only trends and the correlation of trends over such a longer period can give a reliable picture of serious difficulties and their causes. Looking at trends over the whole period of investigation allows the investigating authority not to be misled by outliers, as the one that CRF relied on in their argument.
- (122) Furthermore, the Commission showed that by looking at the trends over the whole period of investigation, it is clear that the imports from Cambodia increased by over 50 % since the MY 2014 (see Table 2 of the Regulation) and its market share increased by nearly 5 percentage points. At the same time, all major indicators on the state of the Union industry showed significant declines (see recital (66) on production, recital (71) on capacity utilisation, recital (82) on employment and recital (75) on sales). The Commission has therefore clearly established the coincidence in time between the increase in imports from Cambodia and market shares and the deterioration of the situation of the Union industry. The claim is therefore rejected.

4.3.5. *Conclusion on causation*

- (123) The Commission has established a causal link between the serious difficulties suffered by the Union industry and the imports from each country individually, therefore from Cambodia and, separately, from Myanmar/Burma. The Commission has also assessed other factors, in particular imports from other third countries, which might have contributed to these difficulties. In this respect, the Commission found that imports from third countries did not

attenuate the causal link, so that there is still a genuine causal relationship between the imports of Cambodia and also from Myanmar/Burma and the serious difficulties of the Union rice millers. Consequently, the Commission found that any impact of the above-mentioned factor on the situation of the Union rice millers did not attenuate the link between the import volume, especially from Cambodia, and prices from Cambodia and Myanmar/Burma, and the serious difficulties suffered by Union rice millers.

5. DISCLOSURE

- (124) Following the final disclosure, CRF claimed that the Commission had failed to disclose all essential facts and considerations that the General Court ordered the Commission to disclose, thereby violating its rights of defence.
- (125) The Commission rejected this claim as unfounded. The Commission indeed disclosed all essential facts and considerations on the basis of which it concluded that indica rice was imported from Cambodia and Myanmar/Burma in volumes and at prices which caused serious difficulties to the Union industry and consequently safeguard measures are warranted. In particular, the Commission disclosed with a Note for the file dated 30 October 2023 all data and the methodology it used for the calculation of consumption and the injury indicators. Furthermore, following CRF's initial comments on the Note, the Commission revised it and made it available in its revised format again at the time of the final disclosure. In addition, the Commission as requested by CRF extended the deadline for comments on the final disclosure from 3 January 2024 until 8 January 2024 thereby giving CRF five additional days for comment beyond the legally mandated fourteen calendar days. As far as undercutting calculations are concerned, as explained above in recitals (107)-(109) the Commission decided not to perform an undercutting calculation, hence there was no need for a disclosure in that respect. Therefore, the Commission considers that the right of defence of the parties was respected and the claim of CRF to the contrary is rejected.
- (126) CRF further claimed that they raised several other pleas in law in front of the General Court that were not addressed, and therefore also not rejected by the General Court, which showed further illegalities in the Commission's original analysis. According to CRF, these unaddressed pleas by the General Court continue to vitiate the Commission's current analysis.
- (127) The Commission rejected this claim as unsubstantiated, in particular as CRF failed to explain and substantiate how the claims it had made in front of the General Court were relevant for the investigation at hand.
- (128) In addition, since some of the CRF comments received subsequent to the final disclosure resulted in a revision of the cumulative assessment made by the Commission, on 28 January 2024 the Commission sent additional partial disclosure to CRF and made it available to all interested parties. Only CRF submitted additional comments on the additional partial disclosure that have been addressed in recitals (102)-(105).

6. FINAL CONCLUSIONS

- (129) It is concluded that Indica rice from Cambodia and Myanmar/Burma was imported in volumes and at prices which caused serious difficulties to the Union industry and consequently safeguard measures are warranted.
- (130) According to Article 22 of the GSP Regulation, the Common Customs Tariff duties of EUR 175/tonne should therefore be confirmed and should be reinstated for the period between 18 January 2019 and 18 January 2020 followed by a progressive reduction in year 2 (EUR 150/tonne) and year 3 (EUR 125/tonne).
- (131) The Commission considers that the analysis and conclusions of the present investigation fully address the errors identified by the General Court and is of the view that the application of the rules, as clarified by the General Court, warrants the re-imposition of the measures.

- (132) The Commission confirms that, as stated in the Regulation at issue, the safeguard measures should be progressively liberalised during this period. Indeed, the GSP Regulation has the prime objective to assist developing countries in their efforts to reduce poverty and to promote good governance and sustainable development, by helping them to generate in particular employment, industrialisation and additional revenue through international trade. The 'Everything But Arms' (EBA) special arrangement, as laid down in the GSP Regulation, helps the world's poorest and weakest countries to take advantage of trading opportunities. These countries largely share a similar economic profile. They are vulnerable because of a low and non-diversified export base and enjoy, therefore, certain protections under the GSP Regulation such as, for example, exemption from product graduation and from the application of automatic safeguards.
- (133) Therefore, the Commission confirms that the progressive reduction in the duty rate over the period of three years, as outlined below, is warranted for EBA beneficiaries.
- (134) A progressive reduction is also sufficient to counteract the deterioration in the economic and financial situation of the Union rice millers.
- (135) Accordingly, the Commission considers it appropriate to reintroduce the following tariff duty for a period of 3 years.

| | year 1 | year 2 | year 3 |
|------------------|--------|--------|--------|
| Duty (EUR/tonne) | 175 | 150 | 125 |

- (136) Since the Commission has confirmed that the duties should remain in place as regards imports made from Cambodia and Myanmar/Burma during the period between 18 January 2019 and 18 January 2022, customs authorities should reject any repayment claim.
- (137) The measures provided for in this Regulation are in accordance with the opinion of the Generalised Preferences Committee referred to in Article 39(3) of Regulation (EU) No 978/2012,

HAS ADOPTED THIS REGULATION:

Article 1

1. The Common Customs Tariff duties on imports of Indica rice originating in Cambodia and Myanmar/Burma and currently falling under CN codes 1006 30 27, 1006 30 48, 1006 30 67 and 1006 30 98 are reintroduced as regards imports made for the period between 18 January 2019 and 18 January 2022.
2. The duty applicable in EUR per tonne of the product described in paragraph 1 shall be 175 for the first year (from 18 January 2019 to 18 January 2020), 150 for the second year (from 18 January 2020 to 18 January 2021) and 125 for the third year (from 18 January 2021 to 18 January 2022).

Article 2

No duty collected pursuant to Article 1 of Implementing Regulation (EU) 2019/67 shall be repaid or remitted.

Article 3

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 11 March 2024.

For the Commission
The President
Ursula VON DER LEYEN
